Ideal Dyeing and Finishing Co., Inc. *and* Southwest District Council, International Ladies' Garment Workers' Union, AFL–CIO. Cases 21–CA–25307, 21–CA–25364, 21–CA–25408, and 21–CA–25874

September 28, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On March 7, 1990, Administrative Law Judge James S. Jenson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed limited exceptions, a supporting brief, and a brief in answer to the Respondent's exceptions.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified.[2]

1. The Respondent discharged Juan Perez March 26, 1987, because it believed that he had threatened another employee, Alberto Roche, that if Roche did not sign up with the Union, he would lose his job when the Union came into the plant. We agree with the judge, for the reasons discussed by him, that Perez was not the person who threatened Roche, and therefore that his discharge violated Section 8(a)(1). *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964). The Respondent argues, however, that Perez' discharge was not unlawful because, in contrast with *Burnup & Sims*, there is no showing that the Respondent was aware that Perez had engaged in protected activities.[3] In support of this argument, the Respondent relies on Perez' testimony that he kept his union activities quiet, and on the judge's failure to find that Perez was otherwise engaged in protected activity at the time of the alleged threats. Thus, the Respondent contends, Perez' discharge was not unlawful under *Burnup & Sims*, even if he was not the person who threatened Roche, because the threats for which he was discharged were not made in the context of any other protected activity on the part of Perez that was known to the Respondent.

We reject the Respondent's argument because it misperceives the Supreme Court's reasoning in *Burnup & Sims*. Protected activity, the Court said, would lose some of its immunity if employers could (even in good faith) discharge employees on false charges, because the example of those discharges could have a deterrent effect on other employees. Although the Court was referring to situations such as the one before it, in which the discharged employees were known to have engaged in protected activities,[4] its reasoning is not limited to those situations alone. Rather, it extends to all cases in which employees are erroneously disciplined or discharged because of alleged misconduct arising out of protected activities that are known to the employer, whether or not the affected employees actually took part in the protected activities. Thus, when an employer, like the Respondent, is aware that a union organizing campaign is underway and it discharges an employee because it mistakenly believes that he has engaged in misconduct arising out of that campaign, the employer's action has the same potential deterrent effect on other employees that concerned the Court in *Burnup & Sims*. The employees would reasonably fear that the continued conduct of the organizing campaign in their plant would put them at risk of being mistakenly punished for the excesses of others engaged in the campaign. Therefore, even if Perez had not taken part in the organizing campaign at all, his discharge still would be unlawful because it was based on the mistaken belief that he had threatened Roche while participating in that campaign.[5]

2. The Respondent excepts to the judge's finding that the strike that began March 26 was an unfair labor practice strike. Although the Respondent concedes that Perez' unlawful discharge was the event that

[1] The General Counsel has moved to strike a letter attached to the Respondent's brief, of which the Respondent has asked the Board to take administrative notice. We grant the motion because, as the General Counsel observes, the letter was not received in evidence. The letter and all references to its contents are stricken from the Respondent's brief. See, e.g., *Redok Enterprises*, 277 NLRB 1010 fn. 1 (1985).

The General Counsel has excepted to the judge's failure to recommend that the Respondent be ordered to post a notice in Spanish as well as English. We find merit in this exception. The record establishes that many of the Respondent's employees do not speak English, or do so only with difficulty, and that the Respondent itself communicated in Spanish with employees on several occasions. Accordingly, we shall modify the Order to provide that the notice be posted in Spanish as well as English.

The judge inadvertently failed to include in his recommended notice the statement that the Respondent will remove from its files all references to Juan Perez' unlawful discharge and will notify him in writing that it had done so and that it will not use the discharge against him in any way. We shall modify the notice to include such a statement.

[2] The complaint alleged numerous violations of Sec. 8(a)(1) and (3). The judge, however, found that the Respondent had violated the Act only by discharging employee Juan Perez and by failing to reinstate unfair labor practice strikers when they made unconditional offers to return to work (or when such offers were made on their behalf). No exceptions were filed to the judge's failure to find any of the other violations alleged.

[3] The Respondent relies on the Supreme Court's statement in *Burnup & Sims* that ''Sec. 8(a)(1) is violated if it is shown that the discharged employee was at the time engaged in a protected activity, that the employer knew it was such, that the basis of the discharge was an alleged act of misconduct in the course of that activity, and that employer was not, in fact, guilty of that misconduct.'' 379 U.S. at 23.

[4] Thus, the Court observed that ''A protected activity acquires a precarious status if innocent employees can be discharged while engaging in it, even though the employer acts in good faith.'' 379 U.S. at 23 (emphasis added).

[5] As the Court noted in *Burnup & Sims*, had the threats for which Perez was terminated been wholly disassociated from activities protected by Sec. 7, the result might be different.

Because we find that Perez' discharge violated Sec. 8(a)(1), we find it unnecessary to decide whether it also violated Sec. 8(a)(3) (as the judge found). See *Burnup & Sims*, 379 U.S. at 22. A finding of an 8(a)(3) violation would not materially affect the remedy.

precipitated the strike, it contends that the strike quickly converted to an economic strike. In this regard, the Respondent relies on the testimony of Dye House Manager Richard Sheriff, to the effect that soon after the walkout began on March 26, employees told Eugene Kogan, the Respondent's president, that they would return to work if he signed a contract with the Union, thus demonstrating that their sole concern by that time was over recognition and economic issues.

Although the judge broadly credited Sheriff's testimony, we are unable to draw the conclusion urged by the Respondent. In the first place, Sheriff's testimony on this point was vague and ambiguous.

> Q. Did you hear any employee say that they would come back and they would—if Kogan would sign a union contract that night? Did you hear anything like that?
>
> A. Yeah, that was much later in the evening.

This colloquy between Sheriff and the Respondent's counsel does not indicate which employee or employees made the statement in question, how many other employees the individual(s) purported to speak for, or even what the statement was. Under these circumstances, we cannot conclude that the employees had abandoned the goal of securing Perez' reinstatement on March 26.

Moreover, Supervisor Richard Reyes testified that several days after the strike began, he translated for Sheriff when a number of strikers came to the plant to pick up their paychecks. He testified that when the strikers were told that they could return to work if they wanted to, they responded, ''We'll come when our friend Juan Perez comes with us. If you get him, we'll come in.'' That testimony establishes unequivocally that at least some of the strikers continued to withhold their services because of the discharge of Perez. The judge thus correctly found that the strike was an unfair labor practice strike, because it was caused by Perez' unlawful discharge, which continued to be a factor that contributed to the strike.[6]

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3.

''3. By discharging Juan Perez on March 26, the Respondent violated Section 8(a)(1) of the Act, and by refusing to reinstate unfair labor practice strikers following their unconditional offers to return to work, the Respondent violated Section 8(a)(3) and (1) of the Act.''

[6] A strike is an unfair labor practice strike if it is caused in part by the employer's unfair labor practices, even if there are other causes of the strike as well. See, e.g., *Northern Wire Corp.*, 291 NLRB 727, 740–741 (1988), enfd. 887 F.2d 1313 (7th Cir. 1989).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Ideal Dyeing and Finishing Co., Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Discharging employees because they are suspected of engaging in protected concerted activities or activities in support of a labor organization.''

2. Substitute the following for paragraph 2(e).

''(e) Post at its Los Angeles, California facility copies of the attached notice in English and Spanish marked ''Appendix.''[48] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discourage membership in or activity on behalf of Southwest District Council, International Ladies' Garment Workers' Union, AFL–CIO, or any other labor organization, or interfere with the protected concerted activities of employees, by discriminating against employees who engage in such activity, by refusing to reinstate upon unconditional application employees who have engaged in an unfair labor practice strike, or by, in any other manner, discriminating

against employees regarding their hire and tenure of employment.

WE WILL NOT discharge employees because we believe they have engaged in union or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer Juan Perez immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position without prejudice to his seniority or other privileges, and WE WILL reimburse him for any loss of earnings he may have suffered because we discharged him, with interest.

WE WILL notify Juan Perez, in writing, that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

WE WILL, to the extent that we have not already done so, offer immediate and full reinstatement to all unfair labor practice strikers to their former positions or, if they no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, any employees hired as replacements, and WE WILL make them whole for any loss of earnings they may have suffered by reason of our unlawful conduct, from the dates the unconditional offers to return to work were made to the date of our offers of reinstatement.

All our employees are free to become or remain members of Southwest District Council, International Ladies' Garment Workers' Union, AFL–CIO or any other labor organization.

IDEAL DYEING AND FINISHING CO., INC.

Samuel B. Reyes, Robert Murray, and *Salvador Sanders*, for the General Counsel.

Charles Goldstein, Deborah Petito, and *Greg Wallace (Goldstein & Kennedy)*, of Los Angeles, California, for the Respondent.

Della Bahan (Reich, Adell & Crost), of Los Angeles, California, and *Michael Rubin (Altshuler & Bergon)*, of San Francisco, California, for the Union.

DECISION

STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge. I heard these cases in Los Angeles, California, on various dates between January 26 and July 29, 1988. The consolidated complaint, as amended before and during the hearing, alleges numerous instances of conduct violating Section 8(a)(1); that five individuals were terminated in violation of Section 8(a)(3); that from March 26, 1987,[1] until November 24, certain employees of Respondent ceased work concertedly and engaged in a strike which was caused and prolonged by the Respondent's unfair labor practices; that on April 7, 26 striking employees made unconditional offers to return to work; that with two exceptions, Respondent has violated Section 8(a)(3) by refusing to honor the unconditional offers to return; that on November 24, the Union made an unconditional offer to return on behalf of all the striking employees; and that Respondent has further violated Section 8(a)(3) by placing them on a preferential hiring list and continuing to fail and refuse to reinstate them. The Respondent denies all unfair labor practice allegations and contends the April 7 alleged unconditional offers to return were not valid unconditional offers. All parties were afforded full opportunity to appear, to introduce evidence, to argue orally, and to file briefs. Briefs totaling approximately 700 pages were filed by the three parties and have been carefully considered.

On the entire record in the case, including the demeanor of the witnesses, and having considered the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

It is admitted and found that the Respondent, a California corporation, is engaged in the business of processing woven and knit fabrics for the garment industry in Los Angeles, California; that it annually sells and ships goods and products valued in excess of $50,000 directly to customers located outside California; that it annually purchases and receives goods and products valued in excess of $50,000 directly from suppliers located outside California; and that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. ISSUES

1. Whether Francisco Herrera was discharged on January 21 for union activity, or because of poor workmanship.

2. Whether Angel Morales was discharged on February 4 for union activity, or because of poor workmanship.

3. Whether Roderico Rodriguez was discharged on March 18 for union activity, or whether his job was eliminated for a legitimate business reason.

4. Whether Juan Rivera was discharged on March 23 for union activity, or because he threatened and intimidated coworkers.

5. Whether Juan Perez was discharged on March 26 for union activity, or because he threatened a coworker with termination if he did not join the Union.

6. Whether on a variety of dates in December 1986 and January, February, and March 1987, Supervisors Kevin Boyle, David Espinoza, Richard Reyes, Gabriel Ramos, Gerardo Luna, and Romiro Flores made statements which interfered with, restrained, or coerced employees in their Section 7 rights.

7. Whether Cesar Guerrero was a statutory supervisor.

8. Whether the strike that commenced on March 26 was caused and prolonged by unfair labor practices.

9. Whether, on April 7, 26 strikers made an unconditional offer to return to work which the Respondent refused to honor.

[1] All dates are in 1987 unless stated to the contrary.

10. Whether, in accordance with the Union's November 24 unconditional offer to return on behalf of all strikers, Respondent refused to reinstate them by placing them on a preferential hiring list.

Credibility is a critical issue, the record revealing considerable testimonial conflict between the 32 witnesses testifying on behalf of the General Counsel and 29 on behalf of the Respondent. In deciding which portions of the testimony to credit, I have considered several factors, including the demeanor of the witnesses while they were testifying, their ability to recall past events, the consistency or the inconsistency of the testimony when it is considered in the context of other testimony, documentary evidence, and matters not in dispute. I have also considered the probability, or the improbability, of certain versions of events in light of the record as a whole. In considering the conflicts in the testimony of certain witnesses, I have also considered which version appears to be more logical in the circumstances, the various positions occupied by the witnesses, and their possible interest in the outcome. With regard to the witness' ability independently to recall past events, consideration has been given as to whether the witness' answers to certain questions followed leading questions of the witnesses on direct examination. (See Rule 611(c) of the Fed.R.Evid.) Further, to the extent that I credit a witness only in part, I do so on the evidentiary rule that it is not uncommon ''to believe some and not all of a witness' testimony.'' *NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2d Cir. 1950). Finally, having observed during the hearing that a number of the witnesses testifying through an interpreter answered some of the questions asked of them prior to their translation into Spanish, I am convinced that far more English was understood by them than they would have me believe. Accordingly, this factor has also been considered in assessing credibility. dissent

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Setting*

The Respondent is engaged in the dyeing and processing of woven and knit materials in Los Angeles, California. While the street address to the office is 905 East Eighth Street, its main gate is located around the corner on Gladys Street. Gene Hogan is the owner, Bill Eizentier is plant manager, Dick Sheriff is the dyehouse manager, and Sonny Sebille is plant engineer. Respondent's answer admits that they, along with Richard Reyes, Gabriel Ramos (a/k/a Flaco), Kevin Boyle, Dave Clifton, David Espinosa, Ramiro Flores, Gerardo Luna (a/k/a Lalo Luna and Laluna), Roy Mendoza, and Michael McNeil, are supervisors and agents. While not alleged as such in the complaint, Respondent acknowledges that Bob Karikka is also a supervisor. David Young and Rudy Gutierrez are employed by the Union and were in charge of organizing Respondent's plant.

Union organizing activities commenced in the latter part of November 1986, when Young contacted employees Francisco Herrera Jr. and Angel Morales outside Respondent's plant. Both men agreed to assist in organizing activities. A number of organizing meetings took place over the next 4 months, the first before Thanksgiving, which was attended by four employees, including Herrera Jr. and Morales. The second meeting was on December 5, 1986, with eight employees present, including Herrera Jr. and Morales. The third meeting was on December 13, with 12 employees present; the fourth on January 10, with 15 to 18 employees present; and the fifth on January 17, with 20 to 23 employees present. Francisco Herrera Jr. was terminated on January 21. The next organizing meeting was on January 24, with about 25 employees present. Among the items discussed was Nerrera Jr.'s termination and sending a letter to the Company listing the names of the union organizers. An organizing committee composed of volunteers was formed in January which met on Thursdays during the organizing period. Subcommittees were also formed. A map committee was responsible for drawing two layouts of the plant on which were noted the job locations of employees and supervisors on each of the shifts. Committees for recruiting and for writing newspaper articles were also formed. By letter dated January 30, the Union informed Kogan that it was engaged in an organizing campaign and attached a list of the names of 17 union supporters, among whom were Angel Morales and Roderico Rodriguez. The letter was received on January 30. On February 2, the Union sent an identically worded letter to Kogan and attached a list of the names of 18 additional union supporters. That letter was received on February 3. Morales was discharged on February 4. The next union meeting was on February 15, with approximately 80 employees in attendance. The Herrera and Morales terminations were discussed along with various employee complaints, filing charges with the Board, and expanding the organizing campaign to the second and third shifts. The next general meeting was on March 15. Approximately 140 employees were present. A strike was among the items discussed, with Gutierrez explaining ''the difference between an unfair labor practice strike and an economic strike and . . . if they ever did have to go on strike, that it would be better for them if it was an unfair labor practice strike.'' Roderico Rodriguez and two others were permanently laid off on March 18. Of the three, only the layoff of Roderico Rodriguez is alleged to have been unlawful. Two general meetings took place on March 19. The ''firings'' of the previous day were discussed along with the pros and cons of striking and the expansion of organizing activities. Laminated badges containing individual photographs of union supporters had been prepared and were distributed and employees were encouraged to start wearing them to work the following day. Juan Rivera was terminated on March 23. On March 26, Kogan had the following letter, which was written in both Spanish and English, hand-delivered to each of the employees:

> During the past week many people have approached me with a question that was disturbing you. This question is now disturbing me. I believe you have the right to have an answer to this question.
>
> Question: Will I be fired because I refuse to sign a card for the Union?
>
> Answer: *NO, NEVER*, I promise you that will never happen. The people who tell you that are lying to you. They are breaking the rules of the Company and the laws of this country. You have a legal right under the laws of this Country to sign a card for the Union or refuse to sign a card for the Union. You must choose based on what is best for you.
>
> I intend to fight this Union using every legal means I can under the laws of this Country.

> Any worker or Supervisor *will be* fired who threatens an employee with loss of their job because they refuse to join a Union, or because they choose to join a Union.
>
> The following pages is a list of the employees which were separated from the Company of as 1/21/87.

The page attached contains the names of 13 individuals that had left the Company since January 21, and the reason for leaving. Four left on their own accord or voluntarily; Roderico Rodriguez, Guadalupe Garcia, and Juan P. Alvarado left because their positions were eliminated; Francisco Herrera Jr., Angel Morales, and Joe Velasquez for ''unsatisfactory work''; one for drinking on the job; one for ''Abandoned machine while in operation. Gross negligence & malicious behavior''; and Juan Rivera for ''Threats & intimidations against coworkers.'' Morning and afternoon union meetings were held at the union hall on March 26. During the afternoon meeting which was attended by about 130 employees, a call was received that there was a problem at the plant and that the second-shift employees had stopped working. Young, Gutierrez, and a number of the people at the meeting went to the plant and learned the employees had quit working in protest over the discharge of Juan Perez.

The record shows that after Perez was discharged, and as he was being escorted through the plant to get his personal belongings, he yelled repeatedly to the other employees that he had been discharged because of his union activities. As a consequence, a number of employees gathered outside the office and informed Sheriff they wouldn't go back to work until Perez was reinstated. In addition to calling the police, Sheriff called Kogan, who came to the plant. Kogan met with the employees and insisted they go back to work or leave and return the next day. They declined to leave unless Perez was reinstated. Employee Oscar Barrios asked Kogan to meet with a union representative. Kogan responded he wouldn't meet with the Union, but he would meet with a couple of the employees the next day and discuss the issues. Employee Guillermo Galicia, who was the main employee spokesman during the evening, asked if he could meet with a union representative outside the gate to which Kogan agreed. Galicia came back and asked Kogan to sign an agreement, which was refused. He then asked Kogan to meet with a union representative, which was also refused, and to talk to the union representative through the fence, which was also declined. Upon threat of arrest, the employees finally left the premises after Kogan agreed to let them go back into the plant buildings to retrieve their belongings. The record shows that picket signs were prepared at the union hall and picketing commenced immediately. Both the second and third shifts stayed off the job that evening, and between 70 and 80 first-shift employees stayed away from work the next morning.

By letter dated March 27, the Union claimed to represent a majority of the Respondent's employees and requested a meeting to work out a resolution to the Company's alleged ''continuing unfair labor practices.'' Respondent did not reply.

The strike had the immediate effect of paralyzing Respondent's operation. In Eizentier's absence,[2] Sheriff was in charge of getting the facility back into production. In doing so, he kept a record of who was working in each department and what jobs were open. In addition to returning strikers, who were initially permitted to start work after contacting their supervisors, Sheriff commenced hiring permanent replacements right away through the front office. By Friday, April 3, approximately 50 replacements had been hired and supervisors were informed that any more strikers wanting to return would have to go to the front office first and talk to Sheriff who would determine whether a position was available at the time. If not, the individual was to be placed on a preferential hiring list and notified when a position was available.

On March 30, Sheriff commenced distributing checks to strikers for the pay period ending March 27. When an employee appeared, his or another supervisor was called to the office to translate. Sheriff asked for the striker's name which he recorded from the already prepared check, if they would sign for the check and told them their jobs were available upon applying at the office. All strikers declined to sign for their checks and stated ''they would not come back to work until all their companions came back to work.''[3]

The credible evidence establishes there was disruptive picket line activity from March 26 to April 7 and thereafter, including threats directed to nonstrikers, the blocking of ingress and egress and damage to vehicles. Based on that conduct, a temporary restraining order was issued by the Los Angeles County Superior Court on April 3. Young, who denied knowledge of such picket line activity, was not a credible witness in this and other respects, nor were any of the General Counsel's witnesses who denied such activity occurred. The credible evidence was overwhelming that such conduct took place and that Young was a principal participant.[4]

On Thursday, April 2, a meeting was held at the union hall wherein it was decided that the strikers would return to work the following Tuesday, April 7. The delay until Tuesday was so that those strikers not at the meeting could be notified and so that the Company, if it had been damaged as badly by the strike as the union representatives thought, would have a chance to contact the Union on Monday. Young told the strikers that the Company would do anything in order to keep from giving them their jobs back, that the jobs belonged to them and that they should go in and ''take your jobs back.''[5]

Roderico Rodriguez, one of the alleged discriminatees, was called as the General Counsel's seventh witness. He testified on cross-examination that another subcommittee was formed between the time the strike started and April 7, that Guillermo Galicia was on the committee and that the subject of ''disabling'' the equipment in order to bring the Company to accept the Union was discussed. Galicia, a witness for Respondent, identified the other members of the subcommittee as Orlando Sanchez, Rolando Hernandez, Julio Cruz, Oscar

[2] Eizentier was away on vacation from March 26 to April 6.

[3] Sheriff testified that a union official had come to the office and demanded he be given the paychecks for dispersal. Sheriff declined on the ground they were still company employees and the Company wanted to be sure they were given to the right persons.

[4] Reluctantly, during cross-examination, Young finally admitted he had been in court after the TRO issued on three occasions in re contempt.

[5] Young's claim that he told them the Company didn't have to take them back right away even if they were unfair labor practice strikers is contrary to the testimony of the strikers and is not credited.

Berrios, Orlando Rivera, Gabriel Panduro, and Cesar Guerrero. Galicia testified that Young attended all the committee meetings, and was ''guiding us.'' According to Galicia, Young told the committee that they could get their jobs back ''at any moment'' and that after the strikers went back to work on April 7, they would work a couple of days and then the departments would rotate going out on strike again. He testified that members of the subcommittee were assigned certain disruptive duties in addition to slowing down production. Berrios, who worked in the dyehouse, was to change the color of the dye; Rolando Hernandez was to ''tear a roll''; Orlando Sanchez, a ''flat folder,'' was to ''change . . . the phases of the material''; Galicia was to make white material come out ''somewhat yellow.'' He testified that Young also set up a confidential committee of four or six that was to watch out for the foremen and direct the disruptive activities when the strikers returned on April 7. Cesar Guerrero, who had no problem remembering other conversations and events in detail, denied knowledge of any plans to damage company property or go out on strike again after working a few days. He admitted on cross-examination, however, that the subcommittee existed but claimed he couldn't remember the committee members or what was discussed other than putting pressure on the Company by a boycott. Guerrero was an evasive witness with respect to the subcommittee and its discussions. I am convinced his lack of memory in this respect was feigned to conceal the subcommittee plans as testified to by Roderico Rodriguez and Galicia. Gabriel Panduro denied he was present when anyone talked about damaging company property or materials or going back out on strike 2 or 3 days after April 7. While Young denied any plans to damage or sabotage property, he acknowledged that ''we did discuss how future strikes might take place if the people were to return to work on [April] 7th.'' Orlando Sanchez, Rolando Hernandez, Julia Cruz, Oscar Berrios, and Orlando Rivera, the others Galicia named as being on the subcommittee, were not called as witnesses. At the conclusion of the General Counsel's case-in-chief, the General Counsel withdrew the names of Orlando Sanchez and approximately 50 others from paragraph 8(a)(1) of the complaint on the ground they were ''unavailable to testify.'' No reason was advanced for the failure to call any of the others listed immediately above. Having carefully considered the demeanor of the witnesses as they testified, their ability to recall events, the positions of the witnesses, their interest in the outcome, and the probability or improbability of their versions in light of the testimony of others, I credit the testimony of General Counsel's witness Roderico Rodriguez that a subcommittee was created which discussed ''disabling'' company equipment and that Guillermo Galicia was on the committee. Cesar Guerrero, another of the General Counsel's witnesses, admitted the existence of the subcommittee, but claimed he couldn't remember the names of the members or what was discussed. Young admitted having discussed future strikes that might take place after April 7. I am convinced their failure to disclose further facts about the subcommittee's plans was influenced by their interest in the outcome of this matter. Galicia, whose testimony is given further credence by the bits of testimony given by Roderico Rodriguez, Guerrero, and Young, impressed me as telling the truth regardless of the outcome. I attribute the garbled nature of his testimony as it appears in the transcript to his obvious nervousness in testifying and impreciseness in translation. Accordingly, I credit his testimony regarding the members of the subcommittee; that Young attended all the meetings and guided it; that certain of the subcommittee members were to engage in disruptive tactics to plant operations when they returned on April 7; and that plans were made to engage in a series of strikes in order to harass the Respondent.[6]

B. *April 7, 1987*

1. First shift

The General Counsel contends the strikers made unconditional offers to return on April 7.

The record shows[7] that about 7 a.m. on April 7, 30 to 40 strikers entered the plant premises in a group through the Gladys Street gate. Upon seeing the group come in, Sheriff, who had arrived at 6 a.m. and was walking across the yard, walked toward them with his hands up in a gesture to stop them and repeated in English in a loud voice to stop and informed them that if they wanted to work they should leave and go around to the front office where he would talk to them one at a time. It is clear the group understood because they left through the gate they had entered and lined up outside the office on Eighth Street. Sheriff checked to be sure the Eighth Street entrance was unlocked. Geraldo Valdovinos was the first striker to enter at 7:15 a.m. The credible evidence establishes that Sheriff followed a standard practice when strikers came to the office. Through an interpreter, he asked what Valdovinos wanted. Valdovinos responded he wanted his job back. Sheriff told him that he could have his job back but that replacements had been hired and it would take a few days to decide where to ''slot'' him in. Sheriff recorded the time and Valdovinos' name and address which he had Valdovinos verify. While Valdovinos denied he was in the office the morning of April 7, he acknowledged he entered the premises at a later time and admitted on cross-examination that Sheriff told him that the Company had a reasonable period of time not to exceed 5 days within which to act on his offer to return and schedule him for available work. On redirect examination, he claimed that knowledge was gained through an April 10 letter from Eizentier informing him additionally that he had been placed on a preferential hiring list. He denied knowledge of an April 15 certified letter asking him to report for work on April 22. Valdovinos at first denied knowing Apolonio Ontiveros who had signed the certified receipt for the April 22 letter. He then admitted Ontiveros was a ''companion striker,'' but stated he wasn't interested in returning to work unless all of the strikers returned. While he admitted to having been in jail between May 10 and July 4, he refused to state where he was around

[6] I have considered the General Counsel's argument that Galicia, who abandoned the strike and returned to work after April 7, was biased and find it unpersuasive. The evidence does not establish he received wage increases related to his testimony, was paid or claimed he was paid $500 to testify for the Respondent, or that he informed another individual he would receive a similar amount for testifying for the Company. The credible evidence establishes that shortly before Galicia met with Respondent's counsel prior to testifying, Jose Luis (Tony) Martinez called Galicia a traitor to the Union and attempted to persuade him not to talk to Goldstein; that Martinez insisted Galicia talk to Young; that an argument and name-calling followed; that Martinez was injured when Galicia attempted to pull him out of an automobile; and that they are no longer friends. Martinez was not a credible witness.

[7] Based on the credited testimony of Sheriff, who impressed me throughout as testifying truthfully and to the best of his memory.

April 15. Although served with the temporary restraining order on April 6, he denied it. Valdovinos was evasive and not credible in a number of respects. Accordingly, I do not credit his testimony where it conflicts with that of the Respondent's witnesses, Sheriff in particular. I find that he entered the company premises along with 30 or 40 other strikers about 7 a.m. on April 7, that he and the other strikers left at Sheriff's behest and went around to the Eighth Street entrance where Valdovinos was the first striker interviewed by Sheriff, and was told that jobs were available but that replacements had been hired and the Company needed a few days to ''slot'' him in, and that he would be placed on a preferential hiring list and recalled as soon as the Company could find a place for him.

The next striker to be interviewed was Luis Alfaro who came in at 7:24 a.m. Alfaro was asked what he wanted and responded he wanted his job back. At some point during the interview, Karikka burst into the office and stated ''they stormed the gate again.''[8] Sheriff responded by rushing into the yard and observing that a number of pickets had come through the Gladys Street gate, had spread out across the yard and were entering the plant buildings. Some of the strikers testified they went to the timeclock to punch in, and while several claimed they punched in after finding their timecard either in the card rack, in a stack of cards near the timeclock, or on a supervisor's desk, they went to their previous job locations which they found occupied by replacements. Sheriff's initial reaction was to call the attorney for the Company, one of which showed up shortly. Concerned with safety and damage to equipment, Sheriff and the supervisors circulated throughout the plant talking to the strikers in an attempt to get them to leave. Some of the strikers claimed they were told by Sheriff or supervisors that they were fired, dismissed, or to ''get out'' or the police would be called. Salvador Rodriguez testified on direct examination that ''somebody said that we had no more work and that we were fired.'' On cross-examination, he testified ''It seems to me it was Roy Mendoza.'' An affidavit given a Board agent on May 25 fails to mention anyone having told Rodriguez he was fired and Mendoza, whom I found to be a reliable witness, denied making that statement. Rather, the affidavit mentions a conversation wherein Reyes told him to go to the front patio for a meeting for all employees, and that the police told the strikers they were trespassing and had to leave. It also states he had never heard Reyes say anything about the Union. Rodriguez also testified that at the April 2 union meeting, Young stated ''the company would do anything in order not to give us our jobs back . . . you have to go in and take your jobs back.''

Cesar Guerrero testified Luna told a group consisting of himself, Jaime Castro, Jose Vargas, Paulino Sanchez, and Romero Sanchez that there was no work and they were standing on private property; and that Reyes told the employees they were standing on private property and should leave and if they wanted jobs, they should go to the front office and fill out applications. This is contrary to Jaime Castro, who testified Reyes said ''to get out, that we had been terminated.'' While Castro knew he was supposed to go to the front office, he denied Sheriff said they should go around to the front office and speak to him if they wanted to work. The other members of the group did not testify. Reyes credibly denied telling anyone they were terminated.[9]

Edie Cifuentes testified on direct examination that Sheriff, with Reyes interpreting, told him he was ''dismissed,'' that another employee was working in his place, and that he had to leave because he was trespassing. He also claimed that Sheriff, Reyes, Eizentier, and Kogan told him in the yard that he was fired. Sheriff and Reyes denied telling anyone they were fired or dismissed and Eizentier and Kogan denied speaking to any employees on April 7. Cifuentes testified on cross-examination that he went back to the plant in the afternoon and that Sheriff told him that the Company couldn't put everyone back to work at the same time, but that Cifuentes' name would be placed on a preferential hiring list; that he responded that all the employees wanted to return together since they had left together. He acknowledged he did not make an unconditional offer to return to work. Sheriff denied telling Cifuentes that he was fired, and testified he told him that work was available but that the Company had hired replacements and needed time to place him and would notify him when a position for him was found. This was followed by an April 10 letter informing him his name had been placed on a preferential hiring list, and by an April 27 letter telling him to report for work May 4. Cifuentes' testimony that he was told he was terminated is not credited.

Jose Luis (Tony) Martinez[10] testified that when the employees entered the premises on April 7, Sheriff was angry and told all of them they were fired. He also claimed that Ramos later asked Felip Magana, Octavio Martinez, Victor Ponciano, and him what they were doing at the timeclock; that Martinez responded they were there ''to ask for our job''; and that Ramos replied ''that we were all dismissed, that we should go outside.'' Instead of leaving, however, he went to the yard where the forklift he formerly worked on was located. After about 30 minutes, he claimed, Sheriff, who was angry, came by and said he was fired. He later testified he had assumed he was fired when Sheriff said to go outside. Octavio Martinez and Victor Ponciano did not testify. Magana testified he didn't ask for his job back because Ramos had told them to leave, ''we had no job there.'' He knew that the Company had hired replacements and he denied that Sheriff said anything to him on April 7. He also claimed Ramos had given him a document on April 7, General Counsel's Exhibit 32, informing him the Union had made an unconditional offer to return on his behalf and that he would be placed on a preferential hiring list and recalled as openings occurred. He denied in a California Unemployment Insurance hearing, however, that anyone from the Company had given him any papers. Ramos denied handing out any papers. General Counsel's Exhibit 32 is not on the letterhead of the Respondent and does not contain the Spanish version which was also on the original document, General Counsel's Exhibit 2. The record shows that all communications between the Company and its employees, including strikers, contained both Spanish and English translations. Moreover, the Union admitted it didn't make an unconditional offer to return on behalf of the strikers on April 7. General Counsel's Exhibit 32—for whatever reason—has ob-

[8] Salvador Rodriguez, a witness for the General Counsel, testified he was in the office and overheard Sheriff tell Alfaro that he would be placed on a preferential hiring list and notified by letter when a position was available.

[9] Guerrero speaks in English.

[10] Listed in the complaint as Jose Antonio Martinez.

viously been severed from the complete document; and, I am convinced, was not released or circulated by the Respondent. Magana was not a credible witness.

Gabriel Panduro testified that he spoke to Roy Mendoza the morning of April 7 and was told ''that my department was taken, that they were going to put me on a preference list.'' He admitted he and the other strikers had gone to the plant to take their jobs back from the people who were occupying them and that he didn't listen to any orders or directions of supervisors to leave.

Arturo Torres Martinez and Francisco Gonzalez went to the plant on April 6 and talked to Sheriff about returning to work. Martinez testified Sheriff asked both of them for their names and addresses and informed them they would be placed on a preferential hiring list. Gonzalez stated Sheriff told them he didn't know what was available then but would let them know within a few days if he could find a place for them. Both men, however, entered the plant on April 7 with the group of strikers, both claimed they punched timecards, and then went to their former work stations which were occupied by replacements. Both men admitted to having been told by someone from management to leave, which neither did until the police came and exhorted them to do so. Martinez testified he ''assumed'' he was terminated because Sheriff had told him to leave the plant. He testified both that the police did and that they didn't tell him he was fired as the basis for his leaving. Gonzalez admitted no one told him he was fired. The Respondent sent Martinez a certified letter dated April 10 recalling him to work April 15 which was returned to the Company bearing the stamp ''No Such Address.''[11] A September 22 letter recalling him to work September 29 was also returned because ''Unclaimed.'' Martinez admitted receiving notice from the post office to pick up an October 5 letter, but claimed the post office declined to let him have it because he had no identification. The October 5 letter was to report to work October 13. While Martinez initially claimed he received letters from Mexico and had received only one originating in the United States since he has lived at that address, that being a certified letter from the Union, further questioning revealed he has received other correspondence originating in the U.S. Martinez was other than candid regarding the receipt of correspondence. He had been told on April 6 that he was being placed on a preferential hiring list, and Gonzalez, who accompanied him on that date, testified Sheriff told them they would receive word in a few days if the Company could place them in jobs. The evidence convinces me that Martinez chose not to accept, or claim, correspondence from the Company, thereby making Respondent's efforts to recall him impossible. Gonzalez testified he received an April 10 letter informing him he had been placed on a preferential hiring list, and another dated April 15 asking him to return on April 22, which he failed to respond to because only a few of the striking employees had been recalled to work.[12]

Telesforo Maldonado,[13] a maintenance man, presented a confusing story of what went on the morning of April 7. He testified on direct examination that he entered the plant at 6:40 a.m., through the main gate, and went to the second floor where he punched his timecard which he found in its normal place; that he ran into Ramos on his way back down to the first floor and was informed there wasn't any work for him; that he proceeded on to the shipping area in search of a broom to commence working where he ran into Reyes who informed him there wasn't any work for him because they had someone who did better work and told him ''to get out''; that he went to the yard where he stayed for about 20 minutes until Sheriff and Reyes told the group that had assembled to leave because they were going to call the police. He claimed he had been in the plant a total of 30 minutes and denied he entered the plant a second time that day. He testified on cross-examination that as he entered through the main gate with other strikers at 6:40 a.m., Sheriff stopped them, asked what they wanted, and stated if they wanted to go to work to go through the front office. His testimony in a State of California Unemployment hearing was to the effect that Sheriff stopped everyone when they entered and told them there wasn't any work and, if they wanted to work, they should go to the front office, which he did and was told by Sheriff that the Company would send him a letter telling him when to come back to work. On redirect, he testified that no one stopped him when he entered at 6:40 a.m., that he proceeded to the timeclock, that Ramos told him there was no work for him, that Reyes said they found someone who did better work, that he went to the yard where Sheriff told him to go to the office, which he did. Sheriff asked if he wanted to work, and on receiving an affirmative response, asked for his address and said the Company would send him a letter about returning to work. He also testified he didn't meet Sheriff at the entrance when he entered at 6:40 a.m., but that it was after talking to Ramos and Reyes, at which time he went to the yard and observed Sheriff raising his hands to stop a group of strikers coming through the gate; that he passed Sheriff and returned with the entering strikers; that he understood Sheriff, who was speaking in English, tell them ''to get out, because they were going to call the police''; that Sheriff told him to go to the office, which he did, and was told the Company would send him a letter. Maldonado testified no one from the Union told him he might have to wait 5 days to start work and that he thought he could enter the plant and start work immediately. I credit Maldonado only to the extent he corroborates Sheriff's account of what happened that morning.

Pedro Vargas testified that when he picked up his paycheck in late March, Sheriff told him jobs were available if he wanted to work.[14] He entered through the main gate at 7 a.m. on April 7, along with about seven strikers and two or three nonstrikers. He, along with several other strikers, including Cesar Guerrero, Jaime Castro, and Jose Vargas, saw Reyes and informed him they had come to work. According to Vargas, Reyes replied, ''we had nothing to do there.'' On his way out, he claimed, he ran into Sheriff in the yard. Sheriff told him to go ''outside because the police were going to be called and were going to take us away.'' While in the yard, he observed Alfaro approximately 100 to 150 meters away in the office and, instead of leaving, went to the office to speak with Alfaro. After about 15 minutes, Sheriff

[11] Martinez testified he had lived at that address for 9 years.

[12] On May 25, Gonzalez executed an affidavit stating he had not been recalled to work. On July 28, he executed a ''Supplemental Affidavit'' wherein he admitted having received a recall letter but that he didn't report to work because ''only a few of the striking employees had been recalled to work.''

[13] Maldonado understands and speaks English.

[14] Vargas is bilingual.

entered the office and again told him to leave because the police had been called. He claimed that Reyes arrived as he was leaving and he asked Reyes ''if they were going to give us our job back or what.'' Reyes replied, ''That we were going to be placed on a [p]reference list and then call us.'' He denied he had gone to the office because Reyes had told him if he wanted a job he should go there and put his name on a preferential hiring list. He claimed he was only on the plant premises about 30 to 40 minutes and observed Goldstein there about 7:20 a.m. The record shows convincingly, however, that Goldstein did not arrive until sometime later, leading to the conclusion that Vargas remained on the premises longer than he claimed.

Enrique Camarillo testified he entered the plant about 6:30 or 7 ''to start working and take our position.'' He went to his machine, but did not work, and stood around until an unidentified man ''told us to get out, that we didn't have a job anymore.'' He apparently remained by his machine until Ramos and Eizentier arrived and told them to ''get out, that we didn't have a job there anymore,'' and ''otherwise the police was going to come.'' He testified he was only in the plant 15 to 20 minutes; however, he admitted on cross-examination that he was escorted out of the plant about 11 a.m. and was the last striker to leave. He denied he was told to go to the office or that he saw Sheriff. He was evasive with respect to the circumstances under which he left the plant and with service of the TRO. He also denied he had received any letters from the Company to return to work. The parties stipulated he received a December 3 letter recalling him and that he started working December 15, was laid off January 18, 1988, and recalled in April 1988.

Victor Samuel Reyes testified that about 9 a.m., April 7, the security guard opened the door in the main gate and about 30 strikers entered about seven paces where they were stopped by Eizentier and two other unidentified members of management and told they were dismissed and go to the office to pick up checks. He claimed he picked up his check from the office secretary.[15] He claimed he received letters in June or July and December calling him back to work, but that he didn't go back after receiving the first one ''because the treatment over there was very bad at the company, the water we were getting was dirty, and they didn't pay me very well.''[16] The record shows he received a letter from the Company on April 11, informing him that he had been placed on a preferential hiring list, and that an April 15 letter asking him to report on April 22 was also received. While the letter makes no mention of wages or job position, he claimed he didn't return because the letter said he had to return to the same position at the same wages and because Perez hadn't been put back to work. He delivered both letters to the Union. The parties stipulated he returned pursuant to a December 3 letter and was laid off May 4, 1988.

Jose Jesus Melchor Reyes[17] testified that he arrived at the plant at 6:45 a.m., found his timecard on Supervisor Reyes' desk, punched in, changed clothes, and started helping Juan Martinez on the extractor until Supervisor Reyes arrived and told him ''to get out, outside, because if I did not get out, the police would arrest me.'' Instead of leaving, he went over to the flat folder and told Victor Escalante what Supervisor Reyes had said. Fifteen or twenty minutes later, Supervisor Reyes and Sheriff came by and looked around but said nothing. Melchor Reyes then went downstairs to the loop dryer and told a coworker what he had been told. The two then went to the yard where he observed Supervisor Reyes and the police and about 40 strikers. An unidentified person from the Company ''told us to get out, otherwise, we were going to be arrested by the police.'' After having been in the plant from 2–2-1/2 hours, he left. He denied anyone told him to go to the office, or that he received any letters from the Company. The evidence shows he was served a copy of the TRO on April 6.

Francisco Herrera, Sr. testified he entered the plant about 7 a.m. and went to the mechanic's shop where Carlos Cordova told him a replacement had been hired as a helper. After 15 or 20 minutes, he testified, Eizentier, Sheriff, and Reyes came and informed him there was no more work there. On cross-examination, he stated he was told by Reyes that he had been replaced, there was no more work there and he should leave. He admitted he didn't tell anyone in management that he was making an unconditional offer to return to work and further admitted he didn't respond to the Respondent's recall letter ''Because we were on strike and if they didn't call all the workers, then we wouldn't go back to work.''

The record shows that work was disrupted while the strikers remained on the premises for more than 3 hours until persuaded to leave by the police.

2. Second shift

The record shows that at 3 p.m., Sheriff walked into the yard and observed strikers dropping over the fence by the main entrance which was chained closed because of what had happened in the morning. He also noted strikers entering the premises through the refuse gate on Eighth Street which had been opened so that a truck could haul away a refuse bin.[18] They were stopped by guards and ushered off the premises. The record establishes that the refuse gate had never before been used by employees entering for work. In addition to second-shift strikers, Cesar Guerrero and Jose Luis Martinez from the first shift and Jose Rodriguez from the third shift also entered at 3 p.m.

Jesus Aguayo, a second-shift striker, testified he went to the plant on April 7 with several other strikers to go to work. While he and the others were waiting outside the gate, Reyes came out from the office and spoke to the guard, then signaled to the men and they left. No one told him he was terminated. He returned to work in response to the Respondent's December 3 letter, but has since left of his own accord.

Francisco Javier Limon was disabled because of an injury on the day the strike commenced and didn't learn about it until the following day when he called the Company to say he wouldn't be in to work. He testified that he went to the union hall the afternoon of April 7 in response to a letter from the Union and that Young told him that the Company wanted the strikers to go to the office and ask to go back to work, but that he wasn't going to do that because they all had to stick together and he should enter and ''start working because we had not been fired yet.'' About 3 p.m.,

[15] Sheriff's records show Victor Reyes picked up his paycheck March 27 from Sheriff.

[16] He had another job at the time.

[17] Named in the complaint as Jose De Jesus Melchor.

[18] Corroborated by Karikka, Reyes, Mendoza, and Boyle and credited.

Limon and about 20 other strikers entered through the main gate and were stopped by the guards and met by the manager and several other personnel from the Company. The group was asked what they wanted and responded, ''we came in to check in to start working.'' They were advised that they had been replaced. The group responded ''No, we were going to work'' after which they were told to leave.

Jesus Gonzalez testified he arrived at the plant about 2:30 p.m. on April 7. He claimed Gutierrez had informed him that the Union had sent the Company a letter that the employees would return to work on April 7 and that he had the right to take his job back by going back any day he wanted to. He admitted that when he went to the plant he was aware that the police had removed those who entered in the morning. He denied he was told to go to the office or that the union representatives told him he might have to wait several days to return to work. He testified he went on strike because Perez was dismissed but that he didn't engage in picketing.

Manuel Marquez testified he entered the plant premises through the main gate at 3 p.m., April 7, with a group of second-shift strikers. They proceeded in about 10 paces, were stopped by the guards, and that Ramos, Boyle, and Reyes told them to leave. The group remained on the premises about 5 minutes and left. He testified Guttierez had told him that the first-shift employees had not been allowed to enter, and that when he entered, his intent was to take his job back immediately. The parties stipulated he received two letters from the Company, one dated December 3 asking that he contact Sheriff by December 14, and a December 15 letter to report for work at 2:30 p.m., December 21. He went back to work at that time and was still employed at the time of the hearing.

Javier Alcala testified he entered the plant at approximately 2:45 p.m. with the other second-shift strikers and got about 10 meters inside the gate when Sheriff told them to ''get out,'' which he did and which he construed to mean he was fired. He denied seeing strikers entering at any other location or hear anyone tell them to go to the office. He was on strike because of Perez' discharge. He denied Sheriff told him that work was available when he picked up his check. He has received no communication from the Company.

Antonio Aguilar testified he arrived at the plant about 2:30 p.m. and entered at 3 p.m. with about five strikers through the main gate. After approximately 10 meters, they were stopped by Sheriff, Eizentier, Reyes, and Luna, who stated they were ''dismissed,'' and if they didn't leave, the police would be called. He testified that after about 20 to 30 minutes, the police came and told them to leave. He also claimed the guards told them to leave or be arrested and that they left in about 2 minutes after entering. No one, he claimed, said anything about going to the office. Guillermo Galicia, a first-shift striker, also entered at 3 p.m. and was one of the speakers on behalf of the second shift. It was stipulated that Aguilar received a December 3 job offer letter from the Company. He returned on April 6, 1988, and was ''dismissed'' May 2. At one point he admitted that when he entered the premises on April 7, he knew the first-shift employees had been turned away by the police. At another point in his testimony, he denied such knowledge until the following day. While he denied having been at the plant premises the morning of April 7, the record shows he was served with a copy of the TRO at 9:41 a.m. at that location.

Nelson Velasquez was a machine operator on the second shift. He testified that when he picked up his paycheck, Sheriff told him jobs were available.[19] Like many of the other strikers, he went to the plant to take his job back immediately. He entered through the main gate on April 7 with 30 or 40 other strikers. He claimed that one of the managers prevented him from punching his card in the timeclock and told him to get out or the police would be called. He also testified he was told to go to the office if he wanted a job and that he exited the main gate and went to the office entrance, which he didn't try because he saw someone lock it. It was stipulated that he received a December 3 letter offering him work and that he subsequently returned.

Ignacio Vargas was a flat folder on the second shift. He denied he was told that work was available when he picked up his check on March 30. He went to the plant shortly before 3 p.m. on April 7, and entered the plant through the door in the main entrance along with 15 to 20 other strikers for approximately 10 to 15 paces when stopped by security personnel. He testified on direct examination that he saw Sheriff, Reyes, and Ramos but that he was standing in the rear of the group and didn't understand what was said. He then testified that Reyes and Ramos told them that they were ''dismissed, that we have no right to come in to work.'' On cross-examination he testified Ramos said, ''Please go outside. You have no work,'' and that Reyes didn't say anything. After the main gate was closed after he entered, he observed 15 to 20 other strikers enter through a gate used by the garbage truck and join his group. He knew the Company had hired replacement workers.

Rafael Andrade Monterrosa was a machine operator in the finishing department before the strike. He obtained another job paying 20 cents per hour more 4 days after the strike started and which lasted until October 30. He testified he picketed at the premises on April 7 from 9 a.m. until 3 p.m. but wasn't aware the police came in the morning and asked the strikers that had entered to leave. He testified he and about a dozen other strikers were able to enter through the main gate when it was opened for a truck to enter. Security guards standing on either side of the gate moved in front of the people entering and gestured for them to stop and leave. Luna told them to leave since there was no work for them. After 5 to 7 minutes, he left and picketed the rest of the day. He denied he was told that the way to get his job back was to go to the office and see Sheriff. He claimed he asked for his job back on three occasions but could only remember one time on June 8, when Reyes informed him there was no work. He denied receipt of a September 3 letter asking him to report on September 9. It was stipulated that he returned to work following receipt of a December 3 letter from the Company.

Toribio Perez was a machine operator on the second shift. He testified on direct examination that he arrived at the plant on April 7 at 2:40 p.m. and entered the plant premises alone through the main gate. Twenty-five to thirty other strikers were already there. He claimed he went to the timeclock but didn't punch in because Luna and Reyes said he couldn't because he didn't have a job and to leave or they would call

[19] The record shows he picked up his paycheck April 3.

the police. On cross-examination, he testified he went to the plant before 7 a.m. and picketed until 8 a.m. He then testified he went home from 7 a.m. until 2:40 p.m. and denied he entered the plant premises in the morning. Confronted with the transcript of his testimony at the state unemployment hearing, he reluctantly admitted that he had entered the plant in the morning also but left after 3 or 4 minutes. He claimed he had gone to his machine in the afternoon and found it stopped. It was stipulated that he received a letter dated December 17 requesting he return to work and that he commenced working January 4, 1988, and was terminated later in the month.

3. Third shift

Third-shift strikers gathered at the main gate at 11 p.m. and left after being informed they had been replaced. The record shows that at least one of the third-shift strikers had entered the company premises with the strikers earlier in the day.

C. *Francisco Herrera, Jr. and Angel Morales*[20]

Herrera, a maintenance mechanic, was hired in November 1982 and terminated January 21, 1987. Paragraph 6(a) of the complaint alleges he was unlawfully terminated for union or other protected concerted activity. He was offered reinstatement on May 4, 1987. As noted above, he and Morales were the first employees contacted by the Union. Herrera testified that on the Monday in November 1986 after he first agreed to talk to his coworkers about going to a union meeting, he asked Gabriel Ramos, the supervisor in the pull down department, ''I told Gabriel Ramos that he can support us to organize the Union. . . . And he say . . . yes, no problem if I talk with his people from his department. . . . I told him . . . this conversation [was] to be a confidential between him and me, and he say he has no problem he will not release any information to nobody.'' Herrera Jr. claims Ramos said he wag in support of the Union and that about 2 weeks later Ramos ''asked me if I am involving in union activities'' to which Herrera Jr. responded affirmatively, and ''why I don't organize the Union only in the mechanics department. . . . [and] you got to be careful with Richard Reyes and David Espinosa because they know you are involved with union activities.'' Paragraph 9(d)(5) of the complaint alleges the latter purported conversation constitutes unlawful interrogation. Ramos admitted that Herrera had said something about the Union about 5 months ''before everything happened,'' but that he hadn't paid any attention to it, and it wasn't until sometime in March, approximately 2 months after Herrera had been terminated, that he informed either Kogan or Eizentier that Herrera Jr. had ever mentioned the Union to him. He denied he had asked Herrera Jr. if he was involved in union activities, that he told Herrera he could talk to people in his department, or that he suggested organizing be confined to the mechanics' department. As will be seen, much of Herrera's testimony surrounding his termination was confusing and contradictory and therefore of doubtful veracity. Since Herrera claims he had already informed Ramos, of his own volition, that he was organizing, I am convinced his testimony that Ramos later asked him if he was involved in union activities was fabricated in an effort to bolster the merits of his alleged unlawful discharge. I credit the testimony of Ramos over that of Herrera and recommend dismissal of paragraph 9(d)(5).

Herrera Jr. testified that in early December 1986, during a safety meeting in the lunchroom with Sheriff, Karikka, Reyes, Silberio Jiminez,[21] Ramos, and Boyle, the following conversation took place:

> Mr. Kevin Boyle, he say, ''Herrera, I want to ask you something.'' Then I ask him, ''What, what do you want to know?'' Then he say, ''Is that true you are involved in the Union activity?,'' and I say, ''No.''
>
> . . . .
>
> Then he say, ''I want you to tell me the truth,'' and I say, ''No, I have no Union activities because the people in this Plant, they are afraid to get on this kind of problem.''
>
> . . . .
>
> I said, ''They are afraid to the Immigration, that's is [sic] why they don't want to get involved in it.''

The conversation was not corroborated and was specifically denied by Boyle, who testified the subject of the Union never came up in the meeting and that he was not aware Herrera Jr. was involved with the Union until he saw him at the gate after the strike started in March. Boyle was the more convincing witness and is credited over Herrera Jr. Accordingly, I recommend dismissal of paragraph 9(a)(1) of the complaint.

Paragraphs 6(a) and (b) of the complaint allege Herrera Jr. and Angel Morales, respectively, were discharged because of union or protected activities. Herrera Jr. was a mechanic, and Morales, who was known throughout the plant as Ironman, was a mechanic helper. The record shows that Kogan had designed and redesigned some of the equipment used in the plant that ranged in cost from $600 to $50,000, including A-frames which are used to transport heavy roles of fabric ranging in diameter up to 60 inches and weighing up to 7000 pounds. Wheels are mounted on one end of the A-frame and a forklift is used to lift the other end in order to move the A-frame with its fabric about the plant. The record shows that some of the A-frames required a structural modification which called for the replacement of the wheels and axle with larger ones capable of bearing more weight. There is no dispute that one of the A-frames was worked on by both Herrera Jr. and Morales and that others in the mechanics' department did the modification work on other A-frames.

There is considerable conflict in the testimony of Herrera Jr. and Morales with respect to how much work the other did on the A-frame in question. It appears from the record that after they started working on it, Herrera Jr. was called away to repair a sewing machine. Morales testified that he used an acetylene torch to cut one hole in the leg of the A-frame because it was easier to use the torch than a drill. Morales was sick for the next 5 days and Herrera Jr. finished the job. Herrera Jr. testified that Morales cut three holes and that it was he that cut only one.[22] He denied he had ever modified an A-frame in this manner, but later testified he had used an acetylene torch on five or six A-frames before and that

[20] Morales was known throughout the plant as ''Ironman.''

[21] Leadman in the dyehouse. It was neither alleged, nor claimed or shown that Jiminez is a supervisor.

[22] Two holes per leg, or a total of four holes had to be enlarged.

Sebille had told him to use it. Claiming Respondent did not have a portable drill capable of handling a 1-inch drill bit, he testified initially that he didn't ask anyone for a 1-inch bit. During rebuttal, however, he testified he asked Clifton for a 1-inch drill bit when assigned to do the A-frame modification in question and that Clifton also told him to use the torch instead. Clifton denied telling him to use a torch. Sebille testified that the portable drills that were available would hold a 1-inch hole saw, which were always available, and that he had seen both Herrera Jr. and Morales use them in the past. Herrera Jr. claimed at one point that it wasn't possible to use a hole saw to enlarge the existing hole because it couldn't be centered. He then admitted the hole saw could be used by centering on a wooden plug placed in the hole. In an affidavit given a Board agent, he acknowledged that the holes he cut ''didn't come out exactly right so the pin [axle] would have been slightly loose in the hole.'' He also characterized Morales' work as a ''lousy job.'' Thus, it is seen from Herrera Jr.'s testimony that the hole he had cut was deficient in that the axle would have been loose, and that Morales did a ''lousy job.'' It is in this context that we look at Respondent's reaction.

Kogan, who had designed the A-frames, testified that several weeks prior to any knowledge of union activity, he was walking through the mechanics area and noticed that someone had done a crude job on an A-frame by enlarging the hole in which the axle rides, thereby rendering it inoperative and dangerous. He asked several people in the area who had done it but no one knew. He stated he was very upset because the work was ''basically a simple job'' but had been done in a manner which showed that someone ''didn't give a damn about the equipment.'' He thought the torch had been used to cut out the axle which should have been removed by using a punch to knock it out. In any event, the work that had been done left an uneven hole which created an unsafe condition where the axle would not run parallel between the holes. Being upset, he went to the office and told Sebille and Eizentier to find out who did it and to discharge him. Sebille in turn told Clifton to find out who had performed the A-frame work. Clifton learned through another mechanic's helper, Carlos Cordova, that Herrera, Jr. had done the work. After confirming the fact with Herrera Jr., Clifton told Sebille that Herrera Jr. had done it. Herrera Jr. was called to Sebille's office and, in Clifton's presence, told he was going to have to be let go because of the damage to the A-frame. Herrera Jr.'s response was to the effect that he already had another job anyway. He was given a termination letter which stated his ''work has been proven to be unsatisfactory.'' Herrera Jr. showed the letter to Sheriff who told him that since he couldn't do anything about it that Herrera Jr. should talk to Eizentier, Kogan, or Sebille. That evening Herrera Jr. returned and told Eizentier that he wasn't the only one that had worked on the A-frame and implicated Morales.[23] Herrera Jr. also registered the fact he was upset because Clifton had been put in charge of the maintenance shop instead of him. Eizentier explained that Clifton had been chosen over Herrera Jr. because the job required reading blueprints, calling vendors and ordering parts over the phone, which Herrera Jr. acknowledged he couldn't do. He told Eizentier he enjoyed working for Respondent, and not to worry about it because had another job. Eizentier told Kogan that Herrera Jr. had said Morales had also worked on the A-frame. Kogan told Eizentier to check into it and if what Herrera Jr. said was true, to terminate Morales. Eizentier told Sebille, who in turn told Clifton, to check into whether or not Morales had worked on the A-frame. Clifton got the mechanics and their helpers together and Morales stated that he had helped Herrera Jr. on the A-frame but that he had been sick and didn't finish the job. His involvement having been confirmed, Morales was terminated on February 4. His termination letter, like that of Herrera Jr., stated that his work had been proven to be unsatisfactory.

Paragraph 9(d)(2) of the complaint alleges that on January 21 (the date Herrera Jr. was terminated) Ramos informed an employee that he was discharged for union activity. Herrera Jr. testified that as he was leaving the office on January 21 after picking up his termination letter, Ramos told him, ''See, they are going to fire you, because you are involved in union activities'' or ''Remember I told you they will fire you because you are involved with the union activities,'' and that Herrera Jr. responded, ''Okay, what can I do about it?'' He also testified that Karikka said he couldn't believe the Company had fired him. He admitted on cross-examination that he had told Gutierrez that he thought he was terminated because he had told Sheriff sometime earlier that Sebille had been having employees punch in for work on Sundays and then have them work outside the company premises thus causing the Company to pay for work not performed for it. Herrera Jr. also testified on cross-examination that he resented the fact that Sebille had selected Clifton over him as a supervisor, and that this precipitated his interest in the Union. Both Ramos and Karikka, whom I credit, denied making the statements Herrera Jr. attributes to them. I am convinced that had such statements been made, Herrera Jr. would have told Gutierrez of the fact instead of stating he believed his discharge was because he had made a report to Sheriff concerning Sebille and Sunday work. The statements attributed to Ramos and Karikka were fabricated. It is obvious that the idea he was terminated for union activities was planted in his mind later by the Union. Accordingly, I recommend dismissal of paragraph 9(d)(2) of the complaint.

Paragraph 9(d)(1) alleges that on January 20, Ramos threatened employees with bodily harm for trying to bring a union into the plant. Morales testified that on January 20, the day before he was terminated, he had a conversation with Ramos and that Tony Martinez, who had been operating the forklift, came up and overheard it. According to him:

> The whole thing started—by me because I told him, ''Hey, Flaco,'' that's his nickname, ''what was the meeting about?'' And then he says, ''Don't—don't talk to me. Don't get near me 'cause don't want to have trouble with you guys.'' And he keep on talking and he was saying about, ''You guys think the—to get the union to the plants, that's very easy. But don't you guys think that because they brought a real smart dude and he's going to fuck you guys up.[24]

[23] Based on the credited testimony of Eizentier. While Herrera Jr. initially denied he identified Morales as having worked on the A-frame, he later admitted he may have done so.

[24] The General Counsel contends the last sentence constitutes a ''threat of bodily harm.''

He claimed he learned the ''smart dude'' was Goldstein, Respondent's attorney, whom he claimed he saw walking around the plant in January. Martinez testified he overheard Ramos tell Norales ''the owners, they have a person who is going to fuck you up.'' Ramos denied making the statement. Morales' timecard shows he did not work on January 20, the day this allegedly happened, and the record leaves no doubt that Goldstein was neither hired as Respondent's attorney nor was on the plant premises until after the strike started on March 27. Neither Morales nor Tony Martinez was a credible witness. Accordingly, I recommend dismissal of paragraph 9(d)(1).

Paragraphs 9(a)(2), (a), (b), (c), and (d) allege that on February 3, Boyle threatened employees with discharge for joining the Union, made statements it would be futile to bring a union into the plant, stated Respondent would call the INS if employees selected the Union, and threatened arrest and/or deportation if they went out on strike. Salvador Rodriguez testified that ''In the middle of February,[25] employees Rosalio Sanchez, Martin Garza, Valenzuela, Manola Gramajo, Alberto Salgado, and Jorge Ballona were warming up their lunches in the knits department when Boyle came in and spoke to them using Ballona to translate from English to Spanish. His testimony was as follows:

> [By Mr. Reyes]
> Q. How long did the conversation last?
> A. Twenty to thirty minutes.
> Q. And what was said and who said it?
> A. Mr. Kevin said that all of us who were in the union were going to have problems.
> Q. What, if anything else, was said?
> A. He said we were going to have problems and that we could lose our jobs.
> Q. What, if anything else, was said?
> A. Because at other times they had also tried to start the union and the Company owners was not in agreement.
> Q. What else was said?
> A. He said that if we ever go on the strike that we should be outside on the street. And that the police was going to come over and just make sure that there was control there but they were not going to say anything.
> Q. What, if anything else, was said in that conversation?
> A. He said we could be there anytime we wanted but the Immigration would come and since we didn't have any papers they were going to take us away.
> Q. What, if anything else, was said in the conversation?
> A. And then we would see who will be better off, if us or them [sic].
> Q. Do you recall anything else from that conversation?
> A. He said if we all were in that, we were going to lose our jobs.
> Q. Do you recall anything else that was said by anyone during that conversation?
> A. I only remember that we were going to have problems and that we were going to lose our jobs, that's all I remember.
> Q. Do you recall any of the employees speaking?
> A. No.
> Q. By the way, was this conversation at the beginning, the middle or the end of February?
> A. In the middle of February.

He testified on cross-examination that he told Union Representative Young about the conversation right away. He also claimed he asked Morales if he had overheard the conversation and that Morales responded affirmatively.

Morales, who was terminated February 4, testified that on February 3, he was fixing a machine in the knits department and overheard Boyle tell ''Manolo Gramajo, Salvador Rodriguez, Reyez Garcia, some other guys . . . whoever's involved with the union is going to get fired like it happened to one already.'' None of the other employees named by Salvador Rodriguez or Morales testified.

Boyle denied making the statements attributed to him by Salvador Rodriguez and Morales. He testified that a couple of weeks prior to the strike, he met with the employees in his department because ''the Union was saying this and the Union was saying that and the guys were worried about losing their jobs if they were a member of the Union,[26] and I wanted to get things clear because I didn't want them to have any worry about anything like that while they were doing their job 'cause they can't worry about that and do their job at the same time.'' He testified as follows:

> I got all the guys together. I had George [Ballona] interpret for me, 'cause I talk real fast, and even the guys that speak English can't pick up on how fast I talk. So I told them basically I didn't care whether they were in the Union or out of the Union, whether they belonged to the Mickey Mouse Club, whether they belonged to this Union. It didn't make any difference to me if they had a badge and they wanted to wear it, they were welcome to wear it. So long as they did the job they were hired to do on the shift they were on, I didn't care what their political or Union affiliations were. It made no difference to me whatsoever. The bottom line was I had to get my department running, and I didn't want them to be worried every five minutes that somebody was going to terminate them because they had a Union badge on or somebody was going to single them out because they were members of the Union or had signed a Union card or anything like that. I just wanted them to think about what they were doing on the job. That's all I told them.
>
> . . . .
>
> I said, ''You want to talk about the Union, that's fine. Do it on your break, do it on your lunch hour, do it off Company grounds. Don't congregate. If I see you guys together, I'm assuming you're talking about work, there's a problem with a machine. If it's anything to do with the Union, what you do on your own time is your own business. It's none of mine.''
>
> . . . .
>
> I told them, I said, ''George, tell these guys point blank they will not be fired for belonging to the Union, for

[25] On cross-examination he placed the meeting in February or March.

[26] Ballona had told him that the employees thought that if they belonged to the Union that they would be terminated.

signing a Union card, or for wearing a Union badge. It makes absolutely no difference.''

Yes, George told them that more than one time at that meeting.

He denied specifically the statements attributed to him by Salvador Rodriguez. Ballona testified that about a month before the strike, he translated as Boyle spoke to the employees in the department. His testimony was that ''Kevin told me to 'Let these people know that if they are trying to get the Union or not, I don't care about it but they had to do it just on break times. . . . He said that he won't get any enemies, that's because the Union, he want to be friends with everybody and if they even want to talk about the Union outside the gates, break times, lunch times, but never in time of work.''' He also denied specifically the statements attributed to Boyle by Salvador Rodriguez. I credit the testimony of Boyle and Ballona regarding what was said and conclude the testimony of Salvador Rodriguez and Morales was fabricated. In this regard, I note that Morales had been terminated on February 4, which was prior to the time any of the others placed the meeting. I recommend dismissal of paragraphs 9(a)(2), (a), (b), (c), and (d).

Paragraph 9(d)(3) alleges that in the first 3 months of 1987, Ramos threatened employees with unspecified reprisals for joining the Union. Tony Martinez testified that in early February, while he was eating lunch in front of the boilers in the patio, ''Flaco told me that if I was involved in the Union, it was better to get out so that I wouldn't get into a problem.'' No one else was present. Ramos denied making the statement. Paragraph 9(d)(4) alleges Ramos threatened employees with discharge if they were to strike. To support this allegation, Tony Martinez testified that at the end of February, while he was working in the patio, Ramos ''said that I should get out of the Union because the first ones that would go on strike were going to be dismissed.'' Herman Boone, who was initially named in the complaint as a discriminatee, was purportedly present. Boone was not called as a witness. Ramos denied ever talking to Tony Martinez about the Union and specifically denied making the statements attributed to him by Tony Martinez. Ramos' denial is credited. I recommend dismissal of paragraphs 9(d)(3) and (4) of the complaint.

Paragraph 9(d)(6) alleges that on several occasions in the first 3 months of 1987, Ramos made statements to employees that it would be futile for them to attempt to bring a union to the facility. Tony Martinez testified that a few days after Herrera Jr. was terminated, he, along with employees Claudio Hernandez, Octavio Nartinez, and Victor Ponciano were in Ramos' office eating lunch and ''We were talking about the Union and someone asked a question. I don't recall what was the question, but the Flaco's answer was that the Union was not going to enter.'' None of the three was called to corroborate Tony Martinez, although Octavio Martinez and Ponciano had initially been listed as discriminatees in the complaint. To repeat once more, Tony Martinez was not a credible witness. Ramos' denial that such a conversation occurred is credited. I recommend dismissal of paragraph 9(d)(6).

Having considered the circumstances surrounding the terminations of both Herrera Jr. and Morales in light of the 8(a)(1) conduct alleged in the complaint, I conclude and find that the General Counsel has failed to prove by a preponderance of the evidence that either Herrera Jr. or Morales was unlawfully discharged. Accordingly, I recommend dismissal of paragraphs 6(a) and (b) of the complaint.

D. *Roderico Rodriquez*

Roderico Rodriguez, who worked at the exit end of the loop dryer, was hired in November 1982 and ''permanently laid off'' on March 18. For a number of years the loop dryer had been manned by two employees per shift, a machine operator at the entry and another employee at the exit end whose job was to watch the material flat-fold as it left the machine. Thus Respondent employed three front-end operators and three exit-end workers to cover three shifts. All three of the exit-end workers were permanently laid off at the same time. While the General Counsel argues all three exit-end workers were union supporters, Rodriguez is the only one of the three that is alleged in paragraph 6 of the complaint to have been unlawfully discharged.[27] It is argued that the layoff of Rodriguez was but an escalation of efforts which started with the firing of Herrera and continued with the firing of Morales and the supervisors' coercive statements, to stop the ever-growing employee movement. Paragraph 9(f) of the complaint alleges Ramiro Flores (Flaco) engaged in nine instances of 8(a)(1) conduct. The General Counsel relies on the testimony of Rodriguez and Edie Cifuentes to prove these violations.

Rodriguez was on the Union's organizing committee and his, along with Morales', name was included in the list of 17 union supporters mailed to Respondent on January 30.[28]

Rodriguez testified that the day after Herrera was terminated, Flores came by his work station and asked if he knew that Herrera had been fired. Rodriguez asked why, and Flores purportedly stated, ''Some of them say that it was because he . . . joined the Union, and others say that because of some bad work . . . the truth is that we don't know . . . which is the real reason.'' He claimed that Flores ''very frequently'' asked him if he was involved with the Union, to which he responded in the negative and that Juan Carrillo had been ''very close'' to them on one such occasion. He claimed that during the first week of February, Flores told him, with Carrillo standing ''one to a half meter'' away, ''that all the ones who were joining the Union to be careful because we could be fired. . . . He only told me only be careful and then he left.'' He testified Carrillo told him that he had heard Flores tell him to be careful. Questioned further about the conversation, he claimed Flores said ''that everyone who was involved with the Union would be fired,'' and that after denying any union involvement in response to a question from Flores, Flores said, ''Be careful because you could have problems.'' He testified that around February 20, Flores walked up to him while he was working and said, ''They fired Angel Morales.'' Asked why, Flores purportedly said, ''Because he was involved with the Union.'' Rodriguez testified further:

> Q. [By Mr. Reyes] What, if anything else, was said?
> A. He also mentioned something like, ''They fire, they fired one of the leaders and be careful because the

[27] Neither of the other two exit-end operators was listed in the letters from the Union as its supporters.

[28] G.C. Exh. 10.

next one might be you.'' He mentioned the name of Herrera.

Q. Do you recall anything else in that conversation?

A. He said it was very difficult that the union, the union being us, would get organized, because he said that he remembered some time ago they had tried to get organized and Dick had known about it and he had fired him.

Q. Do you recall anything else in that conversation?

A. And also he said that it was difficult for us to get organized there, because the Company had lots of money and they could hire the best lawyer and to avoid our organizing.

Q. Do you recall anything else in that conversation?

A. He also told me, that I am—he gave me to understand that he had found out on his own that I was really on the organizing committee because he said that they had received a letter from the union with a list of our names.[29]

Q. Do you recall anything else from that conversation?

A. He also assured me that the next one was going to be me. And besides that, all the ones who were involved with the union were going to be fired.

Q. Do you recall anything else from the conversation?

A. That's all I remember.

Q. At which point in this conversation did Mr. Carrillo come close to where the two of you were?

A. I remember that he came, and I know this because later we talked to him, that he came by, next to us, when he was saying that the next one was going to be me.

And also, Carrillo listened that, when he was saying that because of the union activities that Angel Morales had been fired.

And the three of us, Juan Carrillo, Romero Flores and myself, came to the conclusion that they had not fired Angel Morales because of his, because of bad work, but because of the union activities.

According to Rodriguez, on March 14, Flores made reference to ''berria,'' a Mexican food which was served following union meetings, thereby indicating his knowledge that a union meeting was scheduled the following day, Sunday. He testified he asked Flores how he knew about the meeting and that Flores stated that ''everybody knows it,'' and that the Company wanted everyone to work Sunday so they couldn't attend the union meeting, and that those employees that didn't work on Sunday would be fired. Rodriguez claimed he then invited Flores to the meeting, but that the invitation was declined ''because [Flores] didn't want to have any problem with [Rodriguez] or problems with the Company.'' He testified Flores ''said that he will wish us luck and . . . we were not going to prevail because there wasn't really too much excitement or agitation in the plant, and that . . . we were all going to get fired and that [Flores] was going to see to that. . . . And he said exactly that, 'You are . . . going to be fired.' He said, 'They are thinking [of] firing you, either one by one or two by two until all are out.''' Flores, he claimed, told him ''that if we weren't going to . . . work Sunday we were going to be fired.'' He went on to testify that ''I told him that I wasn't going to work for him the next day and he said that I was going to be fired, but he meant, he meant to say that because of the union.''[30] Rodriguez did work on Sunday and was not fired, nor is there any evidence that anyone was similarly threatened. Carrillo, who was initially alleged as a discriminates in paragraph 8 of the complaint, did not testify. Thus Rodriguez' foregoing testimony is not corroborated. I find it further significant that no mention of this conversation is made in his Board affidavit.

Rodriguez also testified that during lunchtime one day, he and Edie Cifuentes asked Flores to join the Union and that Flores asked who, besides those two, was involved with the Union. He testified that they responded they didn't trust Flores and declined to tell him. Cifuentes, however, denied hearing Flores ask Rodriguez about involvement with the Union.

Cifuentes claimed that he had a number of conversations with Flores beginning in late January regarding the Union but that no one else was present during any of them. The first time Flores asked if he was in the Union, he said no. In early February, he claims to have responded that he didn't know. He claims he admitted he was in the Union the first week of March. He testified that on Friday, March 13, Flores told him ''that the Union was never going to win because the Company had much money and had very good attorneys.'' In an affidavit given a Board agent on June 10, 1987, he specifically denied hearing Flores make that statement. On direct examination, he testified that in early March, ''Ramiro Flores asked me how was the Union going, if there was many persons. Then I said, whether he had found out that the Union had sent a list of the members of the Union from the factory.'' On cross-examination, however, he denied asking Flores anything about a list of members the Union sent the Company. He claimed that on March 16, he overheard Reyes tell Flores that he was going to fire Rodriguez the next day,[31] and that on March 19, the day following Rodriguez' layoff, Flores asked if he knew what had happened to Rodriguez, to which he responded affirmatively, and that Flores ''told me that I was going to be the next one, because I was at [sic] the organization committee for the Union, and that I was going to be dismissed the next Friday.[32]

Flores voluntarily left Respondent's employment after 7 years on March 20 and at the time of the hearing was employed by a trucking firm. He testified that his first knowledge of the Union was the day he left, when people came in wearing union identification badges.[33] He specifically denied having had any conversations with either Rodriguez, Cifuentes, or any employees in his department in which the subject of the Union or those involved in union activities, was mentioned.

[29] This is contrary to an affidavit he gave a Board agent wherein he stated that ''No one from management said anything to me directly about the letter from the Union.''

[30] Rodriguez claimed Carrillo also participated in this conversation.

[31] Reyes credibly denied making the statement or any knowledge of Rodriguez' union sentiment until seeing him on the picket line.

[32] He was not fired, and the pleadings show he was offered reinstatement May 4 after going out on strike on March 26.

[33] The record shows the badges were distributed during union meetings March 19 and first worn March 20.

I credit the testimony of Flores, who is clearly disinterested in the outcome of these proceedings, over the uncorroborated, evasive, and contradictory testimony of Rodriguez and Cifuentes. Having considered their demeanor on the witness stand and the entirety of their testimony, I am convinced it, along with the testimony of some of the other witnesses, was fabricated in an attempt to influence the outcome of the case. Accordingly, I find that Flores did not engage in any of the conduct alleged in paragraph 9(f) of the complaint and recommend its dismissal.

Rodriguez was permanently laid of on March 18. The exit-end operators on the other two shifts were also permanently laid off.[34] Rodriguez testified that he was called to Eizentier's office that day and told, through an interpreter, that he was being laid off because the loop dryer was going to be operated by only one person. Rodriguez testified that he responded he didn't think the machine could be worked by one person alone and that he thought he was being fired because he was a union organizer, that the Company was violating the law ''because I was a member of the electors of the Union,'' that conditions in the plant were bad and that the supervisors, with the exception of Flores, treated the workers badly.

Kogan testified that he was familiar with the operations of two other companies engaged in similar operations, and that they both used only one man on the loop dryer.[35] He testified that while he wasn't sure why Respondent had started using two men on the machine, he had considered cutting back to one man for a couple of years. In March 1987, Kogan asked Reyes to investigate whether there would be any problem in using only one man on the loop dryer.[36] According to Reyes, he first asked the entrance end operators if they could operate the machine alone, and after they had made some adjustments to the machine, they said that they could. Kogan, therefore, made the decision to lay off the three exit-end operators and retain the three entrance-end operators. While one of the entrance-end operators was not identified on the record, the other two, Juan Carrillo and Guillermo Galicia, were union supporters. While the General Counsel claims that all were, Rodriguez was the only one of the three exit end operators identified on the record as a union member.[37] In these circumstances, it is found that it has not been established by a preponderance of the evidence that Rodriguez was unlawfully discharged ag alleged in paragraph 6(c) of the complaint. Accordingly, I recommend dismissal of paragraph 6(c) of the complaint.

[34] The complaint does not allege their layoffs to have been discriminatory.

[35] His familiarity with those operations was due to having been a partner in Cal Pacific, and having finished several million yards of material in the Western Dye House plant.

[36] Reyes testified he had told Kogan 2 years earlier that none of the men were well enough trained to work the machine alone.

[37] Kogan testified to other layoffs resulting from the purchase and installation of new machines and equipment which later necessitated modifications to increase the speed and efficiency of the loop dryer which required the hiring of a second man to operate it on each shift The General Counsel argues Rodriguez should have been transferred to another job in lieu of layoff. Kogan testified that while Respondent tries to retain highly skilled people, most of the jobs are not in the high-skill area and are filed by transient-type employees. The record shows the exit-end operation does not require a high degree of skill.

E. *Juan Rivera*

Rivera was hired in December 1985 and was a jet machine operator on the third shift, 11 p.m. to 7 a.m., when terminated on March 23. He testified he first learned about the Union in mid-February, was active in union organizing activities and passed out about 15 authorization cards. At a state unemployment hearing, however, he denied he was involved in getting employees to sign up with the Union. He testified that in late February, in the presence of two coworkers, whose names he didn't remember, he asked his supervisor, David Espinosa, what he thought about the Union and that Espinosa responded that those who joined the Union would be reported to higher management and be fired. These statements are alleged in paragraphs 9(b)(2), (a) and (b) of the complaint as violations of Section 8(a)(1). Paragraphs 9(b)(1), (a) and (b) allege that in early January, Espinosa interrogated and threatened loss of employment for engaging in union activities. In support of those allegations, Cesar Guerrero testified that in mid-January, Espinosa had observed him talking to Morales and came over to his working station and asked what they had been talking about and that if it was about the Union ''that I . . . might lose my job.'' Other workers were close by, but Guerrero didn't think they were close enough to hear what was said. He claimed his support for the Union was done in secret.

Espinosa denied making the statements attributed to him by Guerrero in January and by Rivera in late February and further denied knowledge of the union activities of the employees until about 2 weeks prior to the strike when fellow employee Juan Castillo told him the Union was going to come in. He later heard from another worker that Rivera was encouraging employees to sign up with the Union. I credit Espinosa's denials that the uncorroborated statements attributed to him by Rivera and Guerrero were made and recommend dismissal of paragraph 9(b) in its entirety. I am convinced the aforementioned testimony of Rivera and Guerrero, like much that has gone before, was fabricated in an attempt to enhance the Union's case.

Rivera testified that the first time be wore the badge identifying him as a member of the union organizing committee was March 22, and that about 11:30 that night, in the presence of coworker Santos Henrique who was also wearing a union badge, Michael McNeil, his supervisor, asked him if wearing it was his idea and ''He asked me if we were the only ones who belonged to the Union and I told him that there were many but that they were not wearing their ID.''[38] He testified that at midnight, about 15 employees were gathered around the lunchtruck on their lunchbreak along with Richard Reyes and McNeil, when Reyes asked him ''if that vas a Union ID—and we were the only ones belonging to the Union.'' He testified: ''I was showing my badge to them. I asked Richard Reyes if be liked my badge. He said, 'no,' be—be did some kind of signal.'' According to Rivera, ''Michael [McNeil] asked me about the badge. The two of them were talking. . . . I told him yes, that I belonged to the Union, that I had my ID and they were laughing.'' By wearing the union identification badge, Rivera openly declared himself an active union supporter. The alleged conversations with McNeil and Reyes were clearly noncoercive and there-

[38] The General Counsel does not contend McNeil's questioning was unlawful. See Tr. 822.

fore not unlawful. See, e.g., *Rossmore House*, 269 NLRB 1176 (1984).

The basis for Rivera's termination on March 23 was an alleged conversation he had with three employees that morning, Bayardo Rodriguez, Eduardo Quintara, and Julio Grijalva, concerning union membership. Rivera denied talking to them that morning and claimed it was in February that he had asked them to sign authorization cards and that both Rodriguez and Quintara had put the cards in their pockets. He later testified he didn't remember whether be had spoken to them in February or March, and at another point he stated Quintara gave the card back to him.[39]

Rivera testified that when he came to work the night of March 23, Benny Lao, a supervisor, asked what he was doing there, escorted him out of the plant and gave him a letter signed by Plant Manager Eizentier stating ''Effective March 23, 1987, you are hereby terminated because of threats and intimidation against your co-workers.'' He denied he asked, or that Lao explained to him, anything about the alleged ''threats and intimidation'' mentioned in the letter.

Respondent called Bayardo Rodriguez, Espinosa, and Sheriff as witnesses regarding Rivera's termination. Rodriguez testified that about 7 a.m. on March 23, 1987,[40] he observed Rivera talking to Quintara and Grijalva and that he went up and asked what was happening. According to him, Rivera was talking to them about the benefits unionization would afford the employees, in the course of which he stated words to the effect that the Union was winning and those employees that didn't join the Union would be fired immediately. Later, Rodriguez called to Espinosa who was passing by the area and told him that he didn't understand what was happening, ''That some say one thing and Juan Rivera says another. Precisely Juan Rivera had just told me that if we did not include ourselves in the Union we were going to be dismissed. When the Union would win.'' According to Espinosa, he then asked Quintara whether Rivera had said what Rodriguez reported, and Quintara responded in the affirmative. Espinosa then told Sheriff what Rodriguez and Quintara had told him, and Sheriff instructed him to find out whether the two would sign a paper testifying to its truthfulness. Espinosa took the two to Sheriff's office and acted as interpreter. According to Sheriff, they stated they were concerned about their jobs because Rivera had told them that when the Union came in, the Union would see to it that those that didn't support the Union would be dismissed. Sheriff testified he assured them their jobs were secure. Later in the day he discussed the incident with Bernard Margolis, a labor consultant, who asked to talk to the two men. They were called in separately and talked to Margolis with Alma Calleros, an office secretary, translating. Sheriff was also present. According to Sheriff, after learning from each man what had transpired, Nargolis took written statements from each one separately in English which were translated into Spanish by Calleros, and signed by each of the employees. The pertinent part of Rodriguez' statement which Sheriff heard Calleros read to Rodriguez before he signed it is: ''At 6:45 a.m. on March 23, 1987 Juan Riviera [sic] told me, 'The owner will accept the Union because there are so many of them, and those that are ignorant like him are going to get fired.' Jaun [sic] told me the Union had already won and they are in.'' Sheriff heard Calleros read Quintara's statement to him before he signed it. It states, ''At 6:45 a.m. on March 23, 1987 Jaun Riviera [sic] told me, 'The majority are already in the Union and those not in the Union are going to get fired.' Juan [sic] said it is better for him to go into the Union because the Union will win.'' According to Sheriff, Margolis then recommended to Eizentier that Rivera be terminated for threats and intimidation of coworkers, and Eizentier drafted the termination letter which was given to Rivera when he reported for work that night.

The General Counsel argues that the reason advanced for Rivera's termination is a pretext to mask the real reason which was his union activity. He argues that Rivera's denial that he had a conversation with the three men on March 23 should be credited over Rodriguez' testimony which he claims is contradictory and not credible. I do not agree. The evidence convinces me that on the morning of March 23, Rivera told Rodriguez, Quintara, and Grijalva that the Union was winning and those that didn't join the Union would be fired. While those precise words may not have been used by Rodriguez in the several times he was required to relate what was said, the same meaning is there. The General Counsel contends, however, that the statement attributed to Rivera is devoid of any threat. Telling an employee that he will lose his job if he doesn't join the Union is as much a threat as an employer telling him he will lose his job if he does join the Union. The Board has consistently held such conduct on the part of either a union or employer is unlawful.

The governing principles in situations such as that presented by the instant case are stated succinctly in *Co-Con., Inc*., 238 NLRB 283, 288 (1978):

> When the employer discharges an employee for misconduct arising out of a protected activity such as a strike, the employer's good-faith belief that the misconduct occurred is not a defense to such a discharge if it is shown that the misconduct never occurred. *NLRB v. Burnup and Sims, Inc*., 379 U.S. 21 (1964). When an employer establishes such an honest belief, the defense is adequate unless the General Counsel affirmatively establishes that such misconduct did not in fact occur. *Rubin Bros. Footwear, Inc*., 99 NLRB 610 (1952), enforcement denied 203 F.2d 486 (C.A. 5, 1953).

Although *Co-Con* involved strike misconduct, the same principles apply to any situation where an employee is disciplined for misconduct in the course of protected concerted activity, including a statement by one employee to another that the latter would have to join a union to keep his job. See, e.g., *Classes Ribbon Co*., 227 NLRB 406 (1976).

Having credited the testimony of Rodriguez, Espinosa, and Sheriff as to what took place on March 23, I conclude the Respondent had a good-faith belief that Rivera threatened Rodriguez, Quintara, and Grijalva that they would lose their jobs unless they joined the Union. I also conclude the General Counsel has failed to affirmatively establish that such misconduct did not in fact occur. Accordingly, I conclude that Respondent did not unlawfully discharge Rivera as al-

[39] As noted earlier, at the state unemployment hearing, he denied any involvement in getting employees to sign up with the Union.

[40] Rodriguez, Quintara, and Grijalva were coming on shift and Rivera was going off shift.

leged in paragraph 6(e) of the complaint, and recommend its dismissal.

F. *Juan Perez*

Perez was hired in March 1986 and worked on a compactor machine on the second shift, 3 to 11 p.m., when terminated on March 26. He testified he first learned about the Union at the end of February, became active in organizing activities right away, and started wearing a badge identifying himself as a member of the union organizing committee on March 20. He testified that the first day he wore the ID badge, his supervisor, Gerardo Luna (referred to throughout the hearing as Laluna and Lalo Luna), came up to him at work and ''He said that he thought we were bad asses because we had the [ID] badges.'' Perez claimed he responded, ''that was the only way of protection'' and that as an example, the Union had come to the aid of an employee named Perico, that had worn an ID badge, and been fired and then reinstated.[41] According to Perez, Luna then ''told me that all of us who were using the badges were going to be fired.'' At the hearing he claimed that no one else was present during the above-described conversations. In a Board affidavit dated May 15, he claimed that fellow employee Felix Moreno had been present. Felix Moreno, whose name had initially been listed in paragraph 8(a)(1) of the complaint and later withdrawn, did not testify. Luna denied he made the uncorroborated statements alleged by Perez or that he had any discussion with Perez regarding the Union. Luna was the more credible witness. Accordingly, I recommend dismissal of paragraph 9(e) of the complaint in its entirety.

Perez was terminated by Sheriff about 5:30 p.m. on March 26 for threatening and intimating fellow employee Alberto Roche. The record shows that on March 18, after having worked about 2 weeks on the third shift (11 p.m. to 7 a.m.), Roche informed Eizentier that his father was very ill in Guatemala and that he needed at least 2 months leave of absence to visit him. About 1:30 or 2 p.m. on March 26, Roche returned to the plant to pick up his check. Reyes testified he saw Roche sitting in the office and asked him what was wrong since he hadn't been to work for a couple of days. According to Reyes, Roche said he was leaving because a person had told him on a daily basis that if he didn't sign up with the Union he would lose his job. Reyes reported the conversation to Eizentier. Margolis, Respondent's labor consultant, was at the plant at the time and Eizentier asked that he speak with Roche. With one of the office secretaries translating, Margolis took a written statement from Roche in both Spanish and English. The statement says, in material part, that on at least eight occasions Perez ''attempted to threaten and intimidate him with loss of his job'' and ''If he didn't sign a card or carry a badge when the Union came in he would not have a job,'' and that ''Because of this pressure I came to Mr. Eizentier's office to quit my job.'' Margolis recommended to Eizentier that Perez be terminated for threats and intimidation, and Eizentier called Kogan who approved the termination which Sheriff carried out with Reyes translating. It is clear from the record that Perez was not asked for his side of the matter or whether it in fact took place.

Roche, who was working for a hotel at the time of the hearing, testified for Respondent that the individual that told him ''that if I didn't go and enter the Union as they came in, I would be left without a job,'' was a ''fat, heavy-set man'' who wore a sleeveless T-shirt, and that he relieved Roche at 7 a.m. when Roche's shift ended. It is clear from the record that Perez worked the second shift, from 3 to 11 p.m., and did not relieve Roche on the compactor machine at 7 a.m. When asked on cross-examination if he knew the name of the person who relieved him, Roche testified ''I told him [Reyes] about the people that were telling me this stuff about the Union. I mentioned the fat man. Then he mentioned out the names for me.'' Thus, it appears to me that Reyes was the individual that placed Perez' name in the mind of Roche as the ''fat man'' who relieved him and made the objectionable statements.

The rule is that a good-faith belief is sufficient to sustain a discharge unless ''it is shown that the misconduct never occurred,'' *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964), and that ''once an honest belief is established, the General Counsel must go forward with evidence to prove that the employees did not, in fact, engage in such misconduct.'' *Rubin Bros. Footwear*, 99 NLRB 610, 611 (1952). The General Counsel has sustained that burden by showing that Perez did not relieve Roche at 7 a.m., and that Roche did not know the name of the individual making the offensive statements and that it was Reyes who came up with Perez' name. In short, I am satisfied that Perez did not engage in the misconduct alleged but that he was unlawfully discharged because Respondent erroneously believed he engaged in unprotected concerted activity. It follows that his discharge violated Section 8(a)(1) and (3) of the Act and that the strike which commenced on March 26 was caused and prolonged because of Perez' unlawful discharge, and was therefore an unfair labor strike as alleged in paragraph 7 of the complaint.

G. *Cesar Guerrero*

Guerrero was hired in October 1984 and worked as a dryer machine operator in the tubing department. He testified that about 3 weeks prior to the strike, he met with Eizentier and Reyes in Eizentier's office and was offered the position of leadman. The position called for a $1.30 wage increase for which it was expected that production would increase. In addition to his usual duty of operating a machine, he was to bring the materials and orders to the other workers so they wouldn't have to stop working. The job also called for keeping a daily production chart which was to be reviewed with Reyes on a weekly basis. Guerrero stated he wanted to think about the job offer. After the meeting concluded, according to Guerrero, he met with Reyes in the latter's office at which time Reyes told Guerrero to let him know if he heard any rumors about the Union. Reyes also explained his new duties and told him that he was not to give any orders to the employees. The following day Guerrero told Reyes he accepted the leadman job. In a Board affidavit dated June 24, 1987, Guerrero states he was told he had authority to issue warnings to employees, but that he never did so because they were his friends. He was also told he had authority to assign overtime, which he handled, he claimed, by asking for volunteers. He claimed he lacked authority to recommend pay

[41] Perico was identified as Victor Ponciano, originally alleged in par. 6(d) of the complaint as having been issued a warning notice and suspended on March 20. This allegation was withdrawn as was Ponciano's name from those strikers listed in par. 8(a)(1) of the complaint.

increases, grant leave from work, or initial timecards. He did not attend management meetings nor receive any additional benefits. Approximately a week before the strike, Sheriff told Guerrero to write up a warning for Jaime Castro for a safety infraction, which Guerrero declined to do.

Guerrero testified that on Saturday, March 14, while he was reviewing the weekly production charts with Reyes, that Reyes asked if he had found out ''something'' about the Union and that he might ''get a nice raise'' if he did. He claimed Reyes said the owner's would never accept the Union and started talking about his brother who ''wanted a union inside so the owner didn't want it, so they closed the Company and he was left without work. . . . He also told me about his sister. . . . They wanted to get the Union into the Company and she was left without work because the owner didn't want it.'' He claimed Reyes also stated that if the Union came in, employees would not be able to work more than 40 hours a week as in the past and made reference to the fact most of the employees lacked ''green cards'' and would lose their jobs. He testified that on Saturday, March 21, Reyes again asked whether he had heard anything about the Union and that he responded the employees were getting ready to strike. Reyes' response, according to Guerrero, was that the Company would call the INS and have the strikers taken away. All the foregoing conversations with Reyes were one-on-one conversations so are, naturally, uncorroborated.

Reyes testified that after he became leadman, Guerrero was in charge of the first and second shifts. His main job was ''feeding the fabric onto the machines,'' checking production and quality, and assigning overtime. He also filled in on a machine when an employee was absent. With respect to overtime, Reyes told him overtime was needed and Guerrero selected the people. If employees had questions about the work, they asked Guerrero who had been in tubing a couple of years and knew the answers. Reyes testified he would give Guerrero a list of priority jobs and Guerrero would assign the jobs to the operators he thought would inspect the goods properly. Reyes described this as routine and done on a daily basis. He denied having ever asked Guerrero anything about the Union and claimed the only time it was ever discussed was when he and Guerrero were going over production figures right after employees started wearing the union badges and he remarked to Guerrero that the badges seemed to have the effect of making the employees work harder. According to Reyes, Guerrero responded ''but . . . they don't know anything about what's happening. . . . It's an experience for them.'' This was followed, according to Reyes, with his relating the experiences of his brother and sister as follows:

> I just told him that at that plant there, that they we were always going on strike and they would be off work for a long time, and I said—and they would be on strike and he would never get that money back and, you know, that's what I was trying to bring across to him.
>
> . . . .
>
> I told him that my sister's—that they helped—that that particular, you know, Union helped her get another job when they closed that plant down. I said, ''There's good ones, there's bad.''

Reyes denied discussing the Union with Guerrero or any other employee at any other time.

To satisfy the definition of supervisor, the authority one possesses must be more than routine or clerical in nature, and must require the use of independent judgment. Reyes characterized Guerrero's duties of assigning and inspecting work as routine and the record supports that description. Also, maintaining production records was clearly a clerical function. Further, Reyes determined when overtime was required and Guerrero merely followed his directions and arranged for the workers, an act that did not require the use of independent judgment. Moreover, the exercise of some supervisory tasks in a merely ''routine,'' ''clerical,'' ''perfunctory,'' or ''sporadic'' manner is not sufficient to bring an employee under the statutory definition of supervisor. *NLRB v. A. E. Nettleton Co*., 241 F.2d 130, 132 (2d Cir. 1957). On the foregoing, I conclude Guerrero was not a supervisor within the meaning of the Act, which leaves the question of credibility between Reyes and Guerrero. Considering the entirety of their respective testimony, Reyes impressed me as the more credible of the two. Consequently, I credit his testimony over that of Guerrero. I thought that Reyes was forthright in his answers whereas Guerrero earlier impressed me with having fabricated testimony regarding statements allegedly made by Espinosa, and also the statements he attributes to Reyes. I also found him to be an evasive witness when questioned about the strike committee meetings. I conclude, therefore, that while the Respondent has failed to establish that Guerrero is a statutory supervisor, the General Counsel has failed to establish by a preponderance of the evidence the allegations in paragraph 9(c) of the complaint. I recommend their dismissal.

H. *Offers to Return*

Unfair labor practice strikers are entitled to immediate reinstatement as of the date they offer unconditionally to return to work even if replacements have been hired. *Mastro Plastic Corp. v. NLRB*, 350 U.S. 270, 278 (1956). The Board has found that the employer ordinarily has a 5-day grace period after unfair labor strikers made unconditional offers of reinstatement in order to effectuate the return in an orderly manner. However, if the employer rejects, unduly delays, or ignores any unconditional offer to return to work, or attaches any unlawful conditions to its offer of reinstatement, the Board concludes the 5-day grace period serves no useful purpose and the employer's obligation commences with the unconditional offer to return. *Tall Pines Inn*, 268 NLRB 1392 fn. 3 (1984).

In my view, the mass entries into the plant on April 7 did not constitute an unconditional offer to return for all the strikers on that date. Rather, as found earlier, the Union's purpose was to take over the plant and disrupt the Respondent's operation in the hope of forcing recognition as the bargaining agent of the employees. While the members of the subcommittee who were designated to disable equipment were undoubtedly aware of the motive, the evidence shows, in my view, that all the strikers were aware of the disruptive intent. Persuasively pointing to the disruptive intent are:

(1) All strikers were informed at the time they picked up their checks that jobs were available on applying at the office.

(2) When the strikers entered en masse on April 7, they were told if they wanted to work that they should go to the front office, and while some did so initially, they later left and joined the second group that had made an assault on the front gate.

(3) Instead of instructing the strikers how to make an unconditional offer, Young told the strikers at the April 2 meeting that they had to go in and ''take their jobs back'' from the people who were working.[42]

(4) The strikers ignored the supervisors' instructions to go to the front office if they wanted to work, and also to leave the company premises.

(5) Most of the entering strikers made no attempt to ''clock in,'' indicating their purpose in entering was other than to work.[43]

(6) Some of the strikers entered the plant premises more than once and on other than their regular shifts.

In sum, I conclude that only the offers to return to work which were made by the Union on November 24, and those made by individual strikers through the office were valid offers to return, and that as unfair labor practice strikers, the Respondent was obligated to offer them jobs within a 5-day grace period. Accordingly, I find that all unfair labor strikers, including those not named in the complaint, and those whose names were deleted from paragraph 8(a)(1) of the complaint pursuant to the General Counsel's motion, were entitled to reemployment by virtue of the Union's unconditional offer to return on November 24 at the latest, or if shown that they made individual unconditional offers prior to November 24, on the dates such offers were made.

Respondent's records show the following strikers made unconditional offers to return to work on the following dates:

April 6—Enrique Salazar; Victor Ponciano; Armond Garcia Martinez; Francisco Gonzalez; Arturo Martinez; Victor Reyes; Donaldo Arevalo; Manuel Padilla

April 7[44]—Geraldo Valdovinos; Luis Alfaro; Francisco Herrera Sr.; Adrian Sanchez; Humberto Reyes; Francisco Logoro; Rolando Hernandez; Jose A. Garcia; Teodoro Venacio Lopez; Carlos Hernandez; Edie Cifuentes

April 8—Mauro Andrade; Guillermo Galicia; Cruz Lucas; Carlos Berrios; Antonio Ibarra; Julio Cruz

April 9—Roberto Monterrosa

April 10—Cesar Monterrosa

May 28—Alfredo Nolasco

June 8—Rafael Andrade

August 14—Agustin Pantoja

September 21—Arturo Martinez

THE REMEDY

Having found Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent unlawfully terminated Juan Perez, I shall recommend that Respondent offer him immediate and full reinstatement to his former job, dismissing if necessary any replacement or, if that job no longer exists, to a substantially equivalent position, without prejudice to seniority and other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of such discrimination from the date of discharge to the date of Respondent's offer of reinstatement, less net earnings during such period.

Having found that the strike which commenced on March 26 was an unfair labor strike, I shall recommend that Respondent restore the unfair labor practice strikers (1) listed above in ''Section H. Offers to Return,'' and (2) upon the Union's unconditional offer effective November 24, immediate and full reinstatement, if it has not already done so, to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them by payment of a sum of money equal to that which they normally would have earned from the dates of their unconditional offers of return to work as found herein, to the date of Respondent's offer of reinstatement, less their net earnings for such period.[45] Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Inasmuch as reinstatement and backpay are conditional on a determination of the employees' status as lawful residents of the United States, and may even be available if an employee has been found to be an undocumented alien, the propriety of these remedies is referred to the compliance stage of these proceedings. *Sure Tan, Inc. v. NLRB*, 467 U.S. 883 (1984); *Liston Brick of Corona*, 296 NLRB 1181 (1989); *Caamano Bros*., 275 NLRB 205 fn. 1 (1986).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Juan Perez on March 26, and by refusing to reinstate unfair labor practice strikers following their unconditional offers to return to work, Respondent violated Section 8(a)(1) and (3) of the Act.

4. The strike which began on March 26 was in its inception, and continued to be, an unfair labor practice strike.

5. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[46]

[42] Testimony of Salvador Rodriguez and Jose Luis Martinez.

[43] I do not credit those strikers who testified they found their timecards and clocked in. The credible evidence shows the strikers' timecards had not been prepared because of their absences due to the strike.

[44] The complaint alleges Herrera Sr. and Cifuentes were offered reinstatement on May 4.

[45] The usual 5-day grace period is not applicable in this situation. *Drug Package Co*., 228 NLRB 108, 114 (1977).

[46] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Ideal Dyeing and Finishing Co., Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, refusing to recall, or otherwise discriminating against employees because they have joined or supported a labor organization or because they are suspected of engaging in such activity.

(b) Refusing to reinstate, on their unconditional application for reinstatement, employees engaged in an unfair labor practice strike.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Juan Perez immediate and full reinstatement to his former job or, if it no longer exists, to a substantially equivalent job, without prejudice to his seniority or other rights and privileges, dismissing, if necessary, any employee hired as a replacement and make him whole for any loss of earnings in the manner set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharge and notify Juan Perez in writing that this has been done and that the termination will not be used against him in any way.

(c) To the extent that it has not already done so, Respondent shall offer immediate and full reinstatement to all unfair labor strikers to their former positions or, if they no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, any employees hired as replacements, and make them whole for any loss of earnings they may have suffered by reason of Respondent's unlawful conduct, from the dates the unconditional offers to return to work were made to the date of Respondent's offers of reinstatement in the manner set forth in the remedy section of this decision.

(d) Preserve and make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and determine the amount of backpay due under the terms of this Order.

(e) Post at its Los Angeles plant copies of the attached notice marked ''Appendix.''[47] Copies of said notices on forms provided by the Regional Director for Region 21, after being signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint be dismissed insofar as it alleges violations of the Act not found herein.

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[47] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''